

LABOUR DEPARTMENT

The 26th September, 1980.

No. 11(112)-80-3-Lab/10742.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad; in respect of the dispute between the workman and the management of M/s Busching Schmitz, Private Limited, Mathura Road, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 226 of 1978

between

SHRI SHIV DUTT SHARMA, WORKMAN AND THE MANAGEMENT OF M/S BUSCHING SCHMITZ, PRIVATE LIMITED, MATHURA ROAD, FARIDABAD

Present :

Shri Amar Singh Sharma, for the workman.

Shri H. R. Dua, for the management.

AWARD

By order No. ID/FD/78/32819, dated 13th July, 1978 the Governor of Haryana referred the following dispute between the management of M/s. Busching Schmitz, Private Limited, Mathura Road, Faridabad and its workman Shri Shiv Dutt Sharma, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Shiv Dutt Sharma was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 5th March, 1979 :—

1. Whether the workman was a probationer ? If so, to what effect ?
2. Whether the work of the workman was unsatisfactory ? If so, to what effect ?
3. Whether the termination of services of the workman was justified and in order ?
4. If not, to what relief is he entitled ?

And the case was fixed for the evidence of the management. The management examined Shri S. P. Chopra as MW 1 and closed their case. Then the case was fixed for the evidence of the workman, who examined himself as his witness and closed his case. Arguments were heard. Now I give my finding Issueswise :—

Issue No. 1.—MW 1 stated that he had brought original record pertaining to the workman. He produced Exhibit M-1 application form and order of appointment M-2 and M-3 letters issued to the workman. In cross-examination he stated that he joined the factory for the last six months. He did not know the workman personally. Nor he had any personal knowledge that his work was unsatisfactory. He joined the factory after termination of services of the workman. He denied the suggestion that the workman was removed from service because he had raised demand for overtime at the double rate. However, he admitted to be correct that the workman was paid overtime at single rate. In cross-examination he stated that no charge sheet was ever issued to the workman, nor any warning was administered to him. He denied the suggestion that the workman was terminated for his trade union activities. The workman who appeared as WW 1 stated that he joined this factory on 1st December, 1974 and served upto 8th August, 1975. He further stated that his services were terminated because he demanded overtime at the rate of double the wages and that he made a complaint in this behalf to the Labour Inspector. In cross-examination he admitted the application form Exhibit M-1 and letter of extension of his probation Exhibit M-2. My attention was drawn to Exhibit M-1 which states that the workman was appointed for a period of six months. Exhibit M-2 is a letter issued to the workman concerned in which his period of probation was extended for further six months with effect from 1st June, 1975. It was also written in the letter that he was expected to improve his performance during the extended period of probation. Both these letters are signed by the workman concerned. Therefore, this issue is decided in favour of the management.

Issue No. 2.—The representative for the management argued that the work of the workman was unsatisfactory. He referred to Ex. M. 2 in which it was so written. The representative for the workman argued that the management has not adduced any evidence on this issue. They have produced only one witness who did not know the workman personally, nor he was in service at the relevant period. As regards M-2 he argued that this is letter of extension of service. Had there been unsatisfactory work, the management would not have extended the service. He also drew my attention to Ex. M-2 in which the word unsatisfactory is missing. There is only words "Not proved to be up to the mark". He argued that upto the mark does not mean unsatisfactory. He also drew my attention to letter of termination which is dated 31st July, 1975. It is stated to be sent by registered post. The management did not produce postal receipt or other evidence of refusal of the workman to receive the letter and also that the same was sent by post received by the workman or came back undelivered. The witness of the management has admitted the facts of overtime allowance at single rate. It seems that this may be a cause of grievance by the management in case of demand of overtime allowance by the workman concerned. The management has failed to prove this issue by any cogent evidence. Therefore, this issue is decided against the management.

Issue No. 3.—The representative for the workman cited 1964 I LLJ, page 9, 1973 II LLJ page 454 and 1969 II LLJ page 542, 1970 Lab. I.C. page 111. Ruling cited 1970 Lab. I.C. is from our own High Court which is as under :—

"Termination of service of temporary employee.—Allegation of unsatisfactory work—Termination of service without any prior notice or chargesheet—Labour Court would be competent to enquire whether order of termination had been effected in *bona fide* exercise of management's power conferred by contract of service, whether it was *mala fide* or whether it amounted to victimisation of employee—Held the unsatisfactory work of employee must be treated as misconduct for which he could not be discharged from service without a proper enquiry.—Absence of evidence of unsatisfactory work. It was open to Labour Court to interfere with the order of management and to afford proper relief to employee."

On my discussions on the above issues, I find that the action of the management is not a *bona fide* exercise of power in the termination of services of the workman. Therefore, this issue is decided against the management.

Issue No. 4.—The workman is entitled to reinstatement with continuity of service and with full back wages.

While answering the reference, I give my award that the termination of services of the workman was unjustified and not in order. The workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

Dated 15th September, 1980.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 850, dated 17th September, 1980

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11 (112)-80-3-Lab/10748.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Goodyear India Ltd. Ballabgarh.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
HARYANA, FARIDABAD

Reference No. 579 of 1978
between

SHRI KANCHI SINGH WORKMAN AND THE MANAGEMENT OF M/S. GOODYEAR
INDIA LTD. BALLABGARH

Present :

Shri S. R. Gupta for the workman.
Shri O. P. Malhotra for the management.

AWARD

By order No. ID/FD/19-75/63520, dated 9th October, 1975, the Governor of Haryana referred the following dispute between the management of M/s. Goodyear India Ltd. Ballabgarh, and its workman Shri Kanchi Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Kanchi Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issue was put as per terms of reference on 14th July, 1979. And the case was fixed for the evidence of the management. On the last date of hearing the parties arrived at a settlement. The settlement is Ex. S-1. I give my award in terms of the Settlement Ex. S-1. I order accordingly.

Dated, the 12th September, 1980.

M. C. BHARDWAJ,

Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 846, dated the 17th September, 1980.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer, Industrial
Tribunal, Haryana, Faridabad.

No. 11(112)-80-3Lab/10783.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s. K. Street Lite Electric Corporation, Faridabad :—

**BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD**

Reference No. 189 of 1978

between

**SHRI MANGAT RAM WORKMAN AND THE MANAGEMENT OF M/S K. STREET
LITE ELECTRIC CORPORATION, FARIDABAD**

Present :—

Shri P. K. De for the workman.

Shri R. C. Sharma for the management.

AWARD

By order No. 30998, dated 5th July, 1978 the Governor of Haryana referred the following dispute between the management of M/s. K. Street Lite Electric Corporation, Faridabad, and its workman Shri Mangat Ram, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the dismissal of Shri Mangat Ram was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 4th June, 1979 :—

1. Whether the reference is bad in law on account of laches ?

2. Whether the workman is gainfully employed ? If so to what effect ?
3. Whether the Workman is entitled to back wages in case termination of services is found unjustified ?
4. Whether the termination of services of the workman was justified and in order ?
5. Relief.
6. Whether Choke section of the management is closed? If so, with what effect?

And the case was fixed for the evidence of the management. The management examined Shri A. S. Sharma as WW-1 and closed their case. Then the case was fixed for the evidence of the workman, who examined himself as his own witness and closed his case. Arguments were heard. Now I give my finding issue-wise :—

Issue No. 1.—The representative for the management did not press this issue.

Issues Nos 2 & 6.—The management did not lead any evidence on these issues, hence these issues are decided against the management.

Issue No. 4.—This issue is taken up because finding on this issue will decide issue No. 3 regarding entitlement of back wages. WW-1 stated that he was appointed Enquiry Officer,—vide Ex. M-1 to enquire into the charges Ex. M-2. The workman participated in the enquiry and he was given full opportunity to cross-examine the witnesses of the management and to lead his defence. Enquiry proceedings are Ex. M-3. Documents received in the enquiry were Ex. M-4 to M-23. M-24 was the finding report. In Cross-examination the witness stated that no evidence was produced before him if the workman was General Secretary of the union, nor he knew that some other charge-sheet was given to the workman. He further replied that he had read over the charges and the workman denied all the charges. The workman in his statement stated that he was General Secretary of the union. He was working as a dester. He used to check three times while 4th test was done by the Inspector. There was no cause of any complain previously against him. The management was annoyed with him for raising demands for revision of pay scales. He produced copy of letter Ex. W-1 demanding some facilities from the Enquiry Officer. In cross examination he stated that he had no copy of demand relating to pay scale. He further stated that the President of the union is still in the service of the management. He admitted his signatures on enquiry proceedings.

I have gone through the records of enquiry. The workman participated throughout the enquiry. He cross-examined the management witness and produced defence witnesses besides giving his own statement. He received copy of the complaints received by the management. It is correct that the company suffered losses in replacement of chokes. There are many complaint letters in the file from different parties. The workman admitted in his statement that he checked chokes three times. Thus the finding of the Enquiry Officer is correct. There is no proof of malafides by the management of their action. This issue, therefore, is decided in favour of the management.

Issue No. 3.—Due to the finding on issue No. 4 in favour of the management, this issue has become redundant.

Issue No. 5 :—The workman is not entitled to any relief.

M. C. BHARDWAJ,

Dated, the 19th September, 1980.

Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

No. 869, dated 19th September, 1980

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.